

Introduced by Senator Harman

(Coauthors: Assembly Members Beth Gaines and Wagner)

February 24, 2012

An act to amend Section 917.1 of the Code of Civil Procedure, relating to appeals.

LEGISLATIVE COUNSEL'S DIGEST

SB 1478, as introduced, Harman. Appeals: undertaking.

Existing law specifies the circumstances in which an undertaking is required in order for the enforcement of a judgment or order to be stayed on appeal, including if the judgment or order is for money or the payment of money, or for costs awarded pursuant to specified provisions.

This bill would provide that the undertaking in these cases shall not exceed \$25,000,000, and, if the party posting the undertaking is an individual or small business, as defined, the undertaking shall not exceed \$1,000,000.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 917.1 of the Code of Civil Procedure is
- 2 amended to read:
- 3 917.1. (a) Unless an undertaking is given, the perfecting of an
- 4 appeal shall not stay enforcement of the judgment or order in the
- 5 trial court if the judgment or order is for any of the following:
- 6 (1) Money or the payment of money, whether consisting of a
- 7 special fund or not, and whether payable by the appellant or another
- 8 party to the action.

1 (2) Costs awarded pursuant to Section 998~~which that~~ otherwise
2 would not have been awarded as costs pursuant to Section 1033.5.

3 (3) Costs awarded pursuant to Section 1141.21~~which that~~
4 otherwise would not have been awarded as costs pursuant to
5 Section 1033.5.

6 (b) ~~The~~ *Subject to the limitations of this subdivision, the*
7 *undertaking shall be on condition that if the judgment or order or*
8 *any part of it is affirmed or the appeal is withdrawn or dismissed,*
9 *the party ordered to pay shall pay the amount of the judgment or*
10 *order, or the part of it as to which the judgment or order is affirmed,*
11 *as entered after the receipt of the remittitur, together with any*
12 *interest~~which that~~ may have accrued pending the appeal and entry*
13 *of the remittitur, and costs~~which that~~ may be awarded against the*
14 *appellant on appeal. This section shall not apply in cases where*
15 *the money to be paid is in the actual or constructive custody of the*
16 *court; and such. Those cases shall be governed, instead, by the*
17 *provisions of Section 917.2. The undertaking shall be for double*
18 *the amount of the judgment or order unless given by an admitted*
19 *surety insurer, in which event it shall be for one and one-half times*
20 *the amount of the judgment or order. However, in no case shall*
21 *the undertaking exceed twenty-five million dollars (\$25,000,000).*
22 *If the party posting the undertaking is an individual or a small*
23 *business, as defined in Section 14837 of the Government Code, on*
24 *the date of the judgment, the undertaking shall not exceed one*
25 *million dollars (\$1,000,000). The liability on the undertaking may*
26 *be enforced if the party ordered to pay does not make the payment*
27 *within 30 days after the filing of the remittitur from the reviewing*
28 *court.*

29 (c) If a surety on the undertaking pays the judgment, either with
30 or without action, after the judgment is affirmed, the surety is
31 substituted to the rights of the creditor and is entitled to control,
32 enforce, and satisfy the judgment, in all respects as if the surety
33 had recovered the judgment.

34 (d) Costs awarded by the trial court under Chapter 6
35 (commencing with Section 1021) of Title 14 shall be included in
36 the amount of the judgment or order for the purpose of applying
37 paragraph (1) of subdivision (a) and subdivision (b). However, no
38 undertaking shall be required pursuant to this section solely for

- 1 costs awarded under Chapter 6 (commencing with Section 1021)
- 2 of Title 14.

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